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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,771	06/27/2003	Lisa Keren Mentz Sievers	11045-3	6434

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EXAMINER

GREEN, BRIAN

ART UNIT PAPER NUMBER

3611

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/607,771	<b>Applicant(s)</b> SIEVERS, LISA KEREN MENTZ	
	<b>Examiner</b> Brian K. Green	<b>Art Unit</b> 3611	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Oct. 14, 2005 has been entered.

### ***Drawings***

The drawing change filed on April 25, 2005 has not been approved since the applicant failed to place "Replacement Sheet" in the top margin of the sheet as required under 37 CFR 1.121. Also, the crossed-out "FIG. 6" should not be shown on the sheet.

The drawings are objected to because in figure 6 each of the figures must be separately labeled, i.e. Fig. 6A, Fig. 6B. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be

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labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the suction cup defined in claim 26 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

Claims 21-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Stating in claim 21, lines 9-10 that the display device provides for “retention of an image therein” while said shaft moves is considered to be new matter. The original specification and drawings fail to provide support for stating that the display device retains an image therein.

Claims 21-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 21, lines 9-10 are indefinite since the image is placed on the outer surface of the display device and not in the display device as defined in these lines. In claim 27, line 2, the use of a trademark “VELCRO” in the claim makes it indefinite.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 21,22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Imparato (U.S. Patent No. 3,067,717).

Imparato shows a base (44), a shaft (12,26), a display device (28), and a surface attachment mechanism (46).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21,22,24, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lund (U.S. Design Patent No. 294,843) in view of Ryan (U.S. Patent No. 4,341,488).

Lund shows in figures 1-6 a base/attachment mechanism (the clip located at the bottom of the device), a shaft (the spring), and a display device (the baseball located on top of the shaft/spring). Lund does not disclose the use of a base and an attachment mechanism. Ryan shows in figures 1-6 a display device (35), a shaft (18), a base (20 or 24), and an attachment mechanism (30). In view of the teachings of Ryan it would have been obvious to one in the art to modify Lund by attaching a base to the shaft and an attachment mechanism to the base since this would allow the device to be attached to a wider range of surfaces in an easier and faster manner. In regard to claim 22, Lund shows in figures 1,4, and 5 that the shaft is in the form of a

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coiled spring. The examiner takes official notice that it is known to make coiled springs from wire. It would have been obvious to one in the art to modify Lund by making the spring from wire since this would create a more durable shaft. In regard to claim 24, Ryan discloses that the attachment mechanism is in the form of an adhesive. In regard to claim 28, the portion (22) of Ryan is considered to be the sleeve and the portion (24) the disc.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lund (U.S. Design Patent No. 294,843) in view of Ryan (U.S. Patent No. 4,341,488) as applied to claim 21 above and further in view of Fuller et al. (U.S. Patent No. 5,605,414).

Lund in view of Ryan disclose the applicant's basic inventive concept except for making the device from ethyl vinyl acetate. Fuller discloses in column 3, lines 24-33 the idea of making a display from waterproof ethyl vinyl acetate foam. In view of the teachings of Fuller it would have been obvious to one in the art to modify Lund by making the display device from ethyl vinyl acetate since this would make the display device lighter and more durable.

Claims 21,22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lund (U.S. Design Patent No. 294,843) in view of Von Meyer (U.S. Patent No. 3,417,496).

Lund shows in figures 1-6 a base/attachment mechanism (the clip located at the bottom of the device), a shaft (the spring), and a display device (the baseball located on top of the shaft/spring). Lund does not disclose the use of a base and an attachment mechanism. Von Meyer shows in figures 1-5 a display device (10), a shaft (12), a base (11), and an attachment mechanism (14). In view of the teachings of Von Meyer it would have been obvious to one in

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the art to modify Lund by attaching a base to the shaft and an attachment mechanism to the base since this would allow the device to be attached to a wider range of surfaces in an easier and faster manner. In regard to claim 22, Lund shows in figures 1,4, and 5 that the shaft is in the form of a coiled spring. The examiner takes official notice that it is known to make coiled springs from wire. It would have been obvious to one in the art to modify Lund by making the spring from wire since this would create a more durable shaft. In regard to claim 24, Von Meyer discloses that the attachment mechanism is in the form of an adhesive.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lund (U.S. Design Patent No. 294,843) in view of Von Meyer (U.S. Patent No. 3,417,496) as applied to claim 21 above and further in view of Fuller et al. (U.S. Patent No. 5,605,414).

Lund in view of Von Meyer disclose the applicant's basic inventive concept except for making the device from ethyl vinyl acetate. Fuller discloses in column 3, lines 24-33 the idea of making a display from waterproof ethyl vinyl acetate foam. In view of the teachings of Fuller it would have been obvious to one in the art to modify Lund by making the display device from ethyl vinyl acetate since this would make the display device lighter and more durable.

Claims 21,22,25, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lund (U.S. Design Patent No. 294,843) in view of Hjelm (U.S. Patent No. 5,323,728).

Lund shows in figures 1-6 a base/attachment mechanism (the clip located at the bottom of the device), a shaft (the spring), and a display device (the baseball located on top of



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the shaft/spring. Lund does not disclose the use of a base and an attachment mechanism. Hjelm shows in figure 5 a display device (4), a shaft (13), a base (12), and an attachment mechanism (14). In view of the teachings of Hjelm it would have been obvious to one in the art to modify Lund by attaching a base to the shaft and an attachment mechanism to the base since this would allow the device to be attached to a wider range of surfaces in an easier and faster manner. In regard to claim 22, Lund shows in figures 1,4, and 5 that the shaft is in the form of a coiled spring. The examiner takes official notice that it is known to make coiled springs from wire. It would have been obvious to one in the art to modify Lund by making the spring from wire since this would create a more durable shaft. In regard to claim 25, Hjelm discloses that the attachment mechanism is in the form of a magnet. In regard to claim 28, the upper portion of (12) in Hjelm is considered to be the sleeve and the lower portion of (12) is considered to be the disc.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lund (U.S. Design Patent No. 294,843) in view of Hjelm (U.S. Patent No. 5,323,728) as applied to claim 21 above and further in view of Fuller et al. (U.S. Patent No. 5,605,414).

Lund in view of Hjelm disclose the applicant's basic inventive concept except for making the device from ethyl vinyl acetate. Fuller discloses in column 3, lines 24-33 the idea of making a display from waterproof ethyl vinyl acetate foam. In view of the teachings of Fuller it would have been obvious to one in the art to modify Lund by making the display device from ethyl vinyl acetate since this would make the display device lighter and more durable.

Claims 21,22,24, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lund (U.S. Design Patent No. 294,843) in view of Blattner (U.S. Patent No. 5,031,865).

Lund shows in figures 1-6 a base/attachment mechanism (the clip located at the bottom of the device), a shaft (the spring), and a display device (the baseball located on top of the shaft/spring). Lund does not disclose the use of a base and an attachment mechanism. Blattner shows in figures 7-9 a display device (10), a shaft (91), a base (30), and an attachment mechanism (80,82 or 70). In view of the teachings of Blattner it would have been obvious to one in the art to modify Lund by attaching a base to the shaft and an attachment mechanism to the base since this would allow the device to be attached to a wider range of surfaces in an easier and faster manner. In regard to claim 22, Lund shows in figures 1,4, and 5 that the shaft is in the form of a coiled spring. The examiner takes official notice that it is known to make coiled springs from wire. It would have been obvious to one in the art to modify Lund by making the spring from wire since this would create a more durable shaft. In regard to claim 24, Blattner discloses that the attachment mechanism (70) is in the form of an adhesive. In regard to claim 27, Blattner discloses that the attachment mechanism (80,82) is in the form of Velcro.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lund (U.S. Design Patent No. 294,843) in view of Blattner (U.S. Patent No. 5,031,865) as applied to claim 21 above and further in view of Fuller et al. (U.S. Patent No. 5,605,414).

Lund in view of Blattner disclose the applicant's basic inventive concept except for making the device from ethyl vinyl acetate. Fuller discloses in column 3, lines 24-33 the idea of

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making a display from waterproof ethyl vinyl acetate foam. In view of the teachings of Fuller it would have been obvious to one in the art to modify Lund by making the display device from ethyl vinyl acetate since this would make the display device lighter and more durable.

Claims 21,22,26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lund (U.S. Design Patent No. 294,843) in view of Kolvites et al. (U.S. Patent No. 5,483,916).

Lund shows in figures 1-6 a base/attachment mechanism (the clip located at the bottom of the device), a shaft (the spring), and a display device (the baseball located on top of the shaft/spring). Lund does not disclose the use of a base and an attachment mechanism. Kolvites et al. shows in figures 3 and 4 a display device (14), a shaft (26), a base (16), and an attachment mechanism (20). In view of the teachings of Kolvites et al. it would have been obvious to one in the art to modify Lund by attaching a base to the shaft and an attachment mechanism to the base since this would allow the device to be attached to a wider range of surfaces in an easier and faster manner. In regard to claim 22, Lund shows in figures 1,4, and 5 that the shaft is in the form of a coiled spring. The examiner takes official notice that it is known to make coiled springs from wire. It would have been obvious to one in the art to modify Lund by making the spring from wire since this would create a more durable shaft. In regard to claim 26, Kolvites et al. discloses that the attachment mechanism (20) is in the form of a suction cup. In regard to claim 28, Kolvites et al. shows that the base includes a sleeve (52,54) and a disc (the circular member from which the sleeve extends).

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lund (U.S. Design Patent No. 294,843) in view of Kolvites et al. (U.S. Patent No. 5,483,916) as applied to claim 21 above and further in view of Fuller et al. (U.S. Patent No. 5,605,414).

Lund in view of Kolvites et al. disclose the applicant's basic inventive concept except for making the device from ethyl vinyl acetate. Fuller discloses in column 3, lines 24-33 the idea of making a display from waterproof ethyl vinyl acetate foam. In view of the teachings of Fuller it would have been obvious to one in the art to modify Lund by making the display device from ethyl vinyl acetate since this would make the display device lighter and more durable.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Imparato in view of Fuller et al. (U.S. Patent No. 5,605,414).

Imparato discloses the applicant's basic inventive concept except for making the device from ethyl vinyl acetate. Fuller discloses in column 3, lines 24-33 the idea of making a display from waterproof ethyl vinyl acetate foam. In view of the teachings of Fuller it would have been obvious to one in the art to modify Imparato by making the display device from ethyl vinyl acetate since this would make the display device lighter and more durable.

### ***Response to Arguments***

Applicant's arguments with respect to claims 21-28 have been considered but are moot in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (571) 272-6644. The examiner can normally be reached on M-F 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
BRIAN K. GREEN  
PRIMARY EXAMINER

Bkg  
Jan. 4, 2006